

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4211 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MAGANLAL DAYALJI PATEL

Versus

URBAN LAND CEILING TRIBUNAL AND ORS.

Appearance:

Kum. V.P. Shah, Advocate, for the Petitioner
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/06/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 21st February 1986 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent 1 herein) on 15th May 1989 in Appeal No. Surat-56 of 1986 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 2 declared the holding of the petitioners to be in excess of the ceiling limit by 22216 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat. It came to be processed by respondent No. 2. After observing necessary formalities under sec. 8 of the Act, by his order passed under sub-section (4) thereof on 1st February 1986, respondent No. 2 declared the holding of the petitioner to be in excess of the ceiling limit by 22216 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 1 under sec. 33 of the Act. It came to be registered as Appeal No. Surat-56 of 1986. By the order passed on 15th May 1989 in the aforesaid appeal, respondent No. 1 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. The petitioner's holding includes one constructed house bearing survey No. 96 admeasuring 109 square meters. As rightly submitted by Kum. Shah for the petitioner, it will have to be excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567.

4. So far as other lands are concerned, Kum. Shah for the petitioner has submitted that they are agricultural lands and they were used for agricultural purposes on the date of coming into force of the Act. According to her, all the lands will have to be excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has submitted that the attention of the authorities below was not focussed in the context of the aforesaid binding

ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra). He has further submitted that no exemption under sec. 20(1) of the Act was granted to the petitioner qua the lands in question on the ground of agricultural operations being carried on therein.

5. It appears that the authorities below could not have focussed their attention on the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) because it had not seen the light of the day at the relevant time. It would therefore be necessary to ascertain whether or not there existed any master plan answering its definition contained in sec. 2 (h) of the Act and what was the situation of the lands in question in such master plan if in existence and whether or not any agricultural operations were in fact carried on therein on the date of coming into force of the Act. All the aforesaid queries will have to be answered on the basis of the material on record. With a view to getting the aforesaid queries answered, the matter will have to be remanded to respondent No. 2. At that stage the petitioner should be given an opportunity to bring on record the relevant material in that regard. The impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition will have therefore to be quashed and set aside.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 21st February 1986 at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 15th May 1989 in Appeal No. Surat-56 of 1986 is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
